

IN THE CHANCERY COURT OF RUTHERFORD COUNTY, TENNESSEE  
AT MURFREESBORO

**FILED**  
2011 AUG 31 PM 3:54

BETTY J. FLEMING, Individually and  
as Administratrix of the ESTATE OF  
DORIS R. FLEMING,

Petitioner,

v.

NATIONWIDE MUTUAL FIRE INSURANCE  
COMPANY and GMAC MORTGAGE, LLC,

Defendants.

JOHN A.W. BRATCHER  
CLERK AND MASTER

Civil Action No. 11CV-1330

**PETITION FOR DECLARATORY JUDGMENT**

**I. INTRODUCTORY/JURISDICTIONAL STATEMENT**

1. Betty J. Fleming is the lawful surviving spouse of Doris R. Fleming, who died intestate in Rutherford County, Tennessee on February 6, 2006. The couple have three adult children, and the Petitioner is the only immediate surviving heir. The parties resided together at a house and lot titled in the name of Doris R. Fleming at 725 Molloy Lane, Murfreesboro, Rutherford County, Tennessee 37129. Betty J. Fleming was appointed Administratrix of the estate of her late-husband by order of the Probate Court of Rutherford County, Tennessee, on April 8, 2010. Copies of the Probate Court Letters of Administration are attached as Exhibit "A" to the Petition.

2. Nationwide Mutual Fire Insurance Company was the casualty insurance provider for the above-described residence at 725 South Molloy Lane in Murfreesboro, pursuant to the terms of Nationwide Policy Number 50-50217735-29. GMAC Mortgage, LLC previously held a mortgage on the above-described property. Petitioner presents a Petition for Declaratory Judgment of the parties' rights, and, alternatively, for judgment for the amounts described below, pursuant to the provisions of Tennessee Code Annotated § 29-14-101, et seq. Jurisdiction and venue of the

Rutherford County Chancery Court is based upon the provisions of T.C.A. § 29-14-103, and the general transitory and in rem venue provisions of T.C.A. §§ 20-4-101 and 20-4-103.

## **II. DESCRIPTION OF MATERIAL FACTS**

On September 16, 2009, the house and lot titled in the name of the decedent, Doris R. Fleming, and occupied as the marital residence by Doris R. Fleming and Betty J. Fleming, was substantially damaged by flood water due to the overflow from a nearby stream. The net amount claimed (following the deductible) was \$38,969.93. Defendant Nationwide Mutual Fire Insurance Company tendered payment of the sum of \$28,642.85 on November 23, 2009 (see attached copy). The check was made payable to "Doris Fleming and GMAC Mortgage, LLC." A simultaneously-issued check in the amount of \$10,000.00 (for property contents) was issued on November 23, 2009, and has been negotiated and cashed with the authority of the Probate Court. The attached check in the amount of \$28,642.85 remains uncashed, and the funds therefore remain in possession of Nationwide. Petitioner asserts that the parties have attempted to resolve the status of the unpaid funds. Following the flood loss of September 16, 2009, the Petitioner was forced to vacate the premises due to its non-habitable condition. Through no fault of the Petitioner, the Petitioner was unable to reoccupy the premises, and the City of Murfreesboro would not permit renovation due to the location of the premises in an immediate flood plain area. Thereafter, Defendant GMAC Mortgage, LLC foreclosed against the premises, which was purchased, for the balance due on the note, by the City of Murfreesboro as a part of its flood-plain reclamation program. Accordingly, GMAC Mortgage, LLC is not entitled to any funds as a result of the flood damage, and the entirety of the attached check should be payable to the Estate of Doris R. Fleming.

## **III. PETITIONER'S LEGAL CLAIMS**

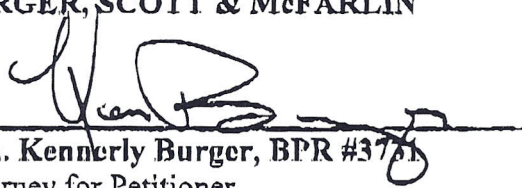
Petitioner Betty J. Fleming asserts lawful standing to pursue recovery of the insurance claim

described above, on behalf of the Estate of Doris J. Fleming, and as sole heir-at-law of her late spouse, Doris J. Fleming. Pursuant to the terms of the above-referenced contract for insurance coverage, Petitioner is entitled to a declaration that Petitioner alone is entitled to receive the funds owed by Nationwide Mutual Fire Insurance Company as a result of the losses described above, which should be paid to, and enure to the benefit of, the Estate of Doris R. Fleming and to Betty J. Fleming. Further, and in the alternative, the homestead rights of Betty J. Fleming (mandated by the requirements of T.C.A. §§ 26-2-302 and 26-2-303) provide for the spouse's homestead right in the foreclosed property on any proceeds payable as a result of the foreclosure, in the amount of Twenty-Five Thousand and No/100 Dollars (\$25,000.00).

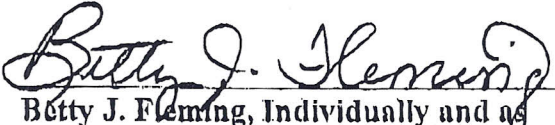
In the alternative, Petitioner seeks judgment on the insurance policy claim against Nationwide Mutual Fire Insurance Company (to the exclusion of GMAC Mortgage, LLC, and its assigned successors in interest) in the amount of Twenty-Eight Thousand Six Hundred Forty-Two and 85/100 Dollars (\$26,642.85), representing the amount of the unpaid claim previously tendered as described above. Petitioner requests that costs be assessed to the Defendants.

Respectfully submitted,

**BURGER, SCOTT & McFARLIN**



Wm. Kennerly Burger, BPR #3761  
Attorney for Petitioner  
12 Public Square North  
Murfreesboro, TN 37130  
Telephone: (615) 893-8933  
Facsimile: (615) 893-5333



Betty J. Fleming, Individually and as  
Administratrix of the Estate of Doris R. Fleming

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**BURGER, SCOTT & MCFARLIN**

AN ASSOCIATION OF ATTORNEYS  
12 PUBLIC SQUARE NORTH  
MURFREESBORO, TENNESSEE 37130

WM. KENNERLY BURGER  
RODNEY M. SCOTT  
BEN HALL (TREY) MCFARLIN, III  
CLAIRE S. BURGER

(615) 893-8933  
FACSIMILE (615) 893-5333  
KENBURGER@COMCAST.NET

April 26, 2010

GMAC Mortgage  
3451 Hammond Avenue  
Waterloo, IA 50704

Re: **Account No. 7414838573**  
**Property Address: 725 Malloy Lane, Murfreesboro, TN 37129**  
**Doris R. Fleming and Betty J. Fleming**

Gentlemen or Ladies:

This office has previously corresponded with GMAC Mortgage regarding the unfortunate circumstances surrounding the foreclosure against my client's above-described residence in Murfreesboro. I have previously forwarded correspondence in December requesting deferral of the foreclosure proceedings pending my client's efforts to resolve pending issues with the City of Murfreesboro regarding code violations which resulted from serious flood damage which occurred to the premises several months ago. Mr. Fleming died on February 6, 2006. Enclosed are the administration papers which authorize my client to act on behalf of his estate.

At the time that my clients effected the mortgage through GMAC, they were unaware that the property was located in a flood plain area. It appears that the appraisal documents reflected that information when GMAC reviewed the initial loan application, but my clients indicate that they were never advised of the flood plain issue, and that they never received a copy of the appraisal documents that were provided to GMAC.

Unfortunately, the property has flooded badly on two occasions since the Flemings financed the property through GMAC. The home has been damaged so badly that it has been declared uninhabitable by the City of Murfreesboro Codes Enforcement Office, and my client was ordered to move from the property. Prior to that time (as your records will reflect), the Flemings had paid their mortgage account in a timely manner. Eventually, GMAC apparently assigned the loan to another entity, and a foreclosure proceeding was commenced in November 2009 and finalized in December

EXHIBIT

GMAC Mortgage  
April 26, 2010  
Page 2

2009. Subsequently, "The Bank of New York Mellon Trust Company" pursued an eviction notice and gained possession of the premises. I am informed that either GMAC or Mellon bid the property for the amount remaining on the note. Accordingly, there should be no deficiency claimed by your bank or any successor, against Ms. Fleming.

The foregoing is recited for the purpose of clarifying the point of my letter. Mr. and Mrs. Fleming were provided with a casualty insurance payment (as a result of the flood damage) by Nationwide Insurance Company on November 23, 2009, totaling \$28,642.85. Of course, the Flemings had substantially more equity in the property than that amount, and that payment by Nationwide Insurance Company to the Flemings constitutes only partial compensation for their substantial equity loss due to the flooding. Accordingly, may I inquire whether GMAC will voluntarily execute the insurance proceeds check (a copy of which is enclosed) prior to the expiration date of the check, which will be approximately May 23, 2010. If the matter cannot be expeditiously resolved, it will be necessary for me to file an interpleader suit against both GMAC and Nationwide in order to protect Ms. Fleming's interest in the fund. I would request that you avoid the need for additional attorney's fees and Court costs by your agreement to execute the check as expeditiously as possible. Your cooperation will be sincerely appreciated by Ms. Fleming.

Sincerely,

BURGER, SCOTT & McFARLIN



Wm. Kennerly Burger

WKB/tlt

cc: Mrs. Betty J. Fleming

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**Nationwide®***On Your Side™***NATIONWIDE MUTUAL FIRE INSURANCE COMPANY**

Flood Insurance Processing Center

P.O. Box 2057 Kalispell, MT 59903 - 2057

600411081

No. 600411081

FLEMING, DORIS  
725 S MOLLOY LN  
MURFREESBORO, TN 37129-3330

Policy#..... 50-50217735-2009  
Insured..... FLEMING, DORIS  
Date of Loss... 9/16/2009  
Paid Date..... 11/23/2009  
Amount..... \$28,642.85

Usps Regular Mail (5-7 Days)  
Building Claim Payment

DETACH BEFORE DEPOSITING

THE ORIGINAL DOCUMENT HAS A TRUE WATERMARK

(HOLD AT LIGHT TO VIEW WHEN CHECKING THE ENDORSEMENT)

**Nationwide®***On Your Side™***NATIONWIDE MUTUAL FIRE INSURANCE COMPANY**

Flood Insurance Processing Center

P.O. Box 2057 Kalispell, MT 59903 - 2057

Wells Fargo Bank, N.A.  
P.O. Box 88  
Kalispell, MT 59903  
wellsfargo.com

600411081

No. 600411081

U3-527/0020

**CAUTION**

THIS IS A MULTIPLE PARTY CHECK  
WHICH REQUIRES SIGNATURES OF ALL PAYEES

DATE

AMOUNT

11/23/2009

\$28,642.85

VOID IF NOT CASHED WITHIN 6 MONTHS

PAY

\*\*\*28,642\*AND\*85/100\*DOLLARS\*

TO THE  
ORDER OF  
MAIL ☐  
TO:

**FLEMING, DORIS and GMAC MORTGAGE LLC**

FLEMING, DORIS  
725 S MOLLOY LN  
MURFREESBORO, TN 37129-3330

**EXHIBIT**



**STATE OF TENNESSEE**  
**Department of Commerce and Insurance**  
**500 James Robertson Parkway**  
**Nashville, TN 37243-1131**  
**PH - 615.532.5260, FX - 615.532.2788**  
**brenda.meade@tn.gov**

**FILED**  
2011 SEP 19 PM 12:42  
JOHN A.W. BRATCHER  
CLERK AND MASTER

September 14, 2011

Nationwide Mutual Fire Insurance Company  
800 S. Gay Street, Ste 2021, % C T Corp.  
Knoxville, TN 37929-9710  
NAIC # 23779

Certified Mail  
Return Receipt Requested  
7011 1570 0003 6421 0622  
Cashier # 5215

Re: Betty J. Fleming V. Nationwide Mutual Fire Insurance Company

Docket # 11Cv1330

To Whom It May Concern:

Pursuant to Tennessee Code Annotated § 56-2-504 or § 56-2-506, the Department of Commerce and Insurance was served September 12, 2011, on your behalf in connection with the above-styled proceeding. Documentation relating to the subject is herein enclosed.

Brenda C. Meade  
Designated Agent  
Service of Process

Enclosures

cc: Chancery Court Clerk  
Rutherford County  
20 Public Square North, Rm 302  
Murfreesboro, Tn 37130